

REMARKS

The addition of these amendments will not result in the introduction of new matter. Moreover, the entry of this amendment will not require a further search by the Examiner, nor is it believed that this will require a non-routine expenditure of resources by the Patent and Trademark Office. It is submitted that the amendment will place the case in good condition for allowance.

Claims 1-8 and 10-25 are resubmitted. Claims 1-5, 10-12, 16, 18 and 19 are amended. Claims 9 and 22-66 stand as canceled in a previous paper. Claims 67-82 are added.

Status of Claims

Claims 1-8 and 10-25 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Taggart (US 6,475,435) in view of Takehana (US 4,88,936).

In response, claims 1-5, 10-12, 16, 18 and 19 are amended. Support for the amendments to the claims may be found in the originally filed specification, especially at paragraphs [0029] (for support of the term "non-oxygen bearing fluid") and [0040] (for support of the third inert fluid). No new matter is added.

New claims 67-82 are added. Support for the new claim may be found in the originally filed specification and drawings, especially at paragraphs [0032], [0044] and [0045]. No new matter is added.

Examiner Interview

Applicants would like to thank Examiner Harmon for taking the time to discuss the merits of the instant application in a telephone interview on October 12, 2004. The pending claims were discussed relative to the cited references of

Taggart and Takehana. In particular, Applicants discussed Taggart's use of a sterilizing gas as opposed to the non-oxygen bearing gas of the instant invention. Furthermore, Applicants discussed the instant invention's fluid stream on the caps, as is not taught or fairly suggested by either Taggart or Takehana. While no agreement was reached, the Examiner agreed to review and consider Applicant's proposed amendments (as recited above).

Taggart

Taggart discloses a system capable of sterilizing and capping bottles. The system includes a spray apparatus 126 having nozzles 122 for spraying a sterilant (e.g., hydrogen peroxide) into bottles 12, as described at col. 8, lines 33-62. The system also includes a sterile air supply system 146 for spraying sterile air through nozzles 150 into bottles 12 (after the bottles have been sprayed by apparatus 126). The system includes reels 210 (shown in Fig. 13) for translating "daisy chains" 202 of lids 200 over the tops of bottles 12 (after the bottles have been sprayed with air by nozzles 150).

Each of the reels 210 (shown in Fig. 13) dispenses a daisy chain 202 of lids 200. Taggart teaches at col. 12, lines 26-63 that each chain 202 "winds off of a corresponding reel" 210. When a lid 200 (of a chain 202) has approached an open bottle 12 (below the lid), the lid is sealed on the bottle by heat sealing apparatus 214 (shown in Fig. 13). Heat sealing apparatus 214 includes a heated platen 216 which applies heat and pressure against each lid 200 to form a seal between the lid and the bottle 12 therebelow.

Takehana

Takehana discloses an apparatus for applying caps to bottles. The apparatus includes cap press 9 (shown in Fig. 2) for pressing a cap 8 on each bottle. A nozzle (e.g., the unlabeled nozzle at the left side of Fig. 2) ejects non-

oxidizing gas toward the mouth of each uncapped bottle just before a cap is pressed onto the bottle's mouth. Optionally, the nozzle has inlets 13 (shown in Figs. 3A and 3B) into which liquid spilled (from within each bottle) is sucked during the capping operation.

Claim Rejections – 35 U.S.C. 103(a)

The Examiner rejects claims 1-8 and 10-25 under 35 U.S.C. 103(a) as being unpatentable over Taggart in view of Takehana. The Taggart reference is drawn to the sterilization of packaging, e.g., bottles, prior to filling. In Taggart, a sterilization fluid, such as hydrogen peroxide, is sprayed into the bottles to coat the entire insides thereof. Hot sterile air is then used to activate and dry the sterilization fluid from the bottles, thereby preparing the bottles to be filled with the desired contents.

The present invention uses non-oxidizing fluid, such as an inert fluid or gas, to purge air from the headspace between the top level of the contents of a container and its cap. The fluid provided by Taggart is neither non-oxidizing nor inert. The only sterilizing media disclosed by Taggart is that of steam (column 4, line 52), in reference to aseptic testing methods, and that of hydrogen peroxide or oxonia (column 4, lines 65-67). Claims 1 and 10, as amended, require the use of a non-oxidizing fluid to be injected into the container.

While Takehana discloses the use of a "non-oxidizing gas," one skilled in the art would not be motivated to use the non-oxidizing gas of Takehana in the disclosure of Taggart, as such a modification would render Taggart unsatisfactory for its intended purpose (sterilization). Taggart discloses hydrogen peroxide or oxonia for use in the present invention. Furthermore, Taggart requires the use of hot sterile air to activate and dry the sterilant from the interior of the bottles (column 10, lines 32-34). The necessary use of air in

Taggert is a further example of how one skilled in the art could not apply the “non-oxidizing gas” of Takehana to the teachings of Taggert. It is well established that there is no suggestion or motivation to make a modification to a reference when that modification would render the reference unsatisfactory for its intended purpose. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Furthermore, claim 1, as amended, claims 10 and 20 as previously presented and newly added claim 67 and 74 require the second non-oxygen bearing fluid to be directed into the caps. Neither Taggert nor Takehana teach or fairly suggest such a fluid stream. In the Office Action at Page 2, the Examiner admits that “Taggert does not provide a fluid to the caps,” however, the Examiner states, “...Takehana et al. disclose a fluid dispensing shoe which dispenses a fluid to both containers and caps located in holding arms and then applied by wiper 9 (see figure 2).”

However, a careful review of figure 2, along with the entire Takehana disclosure, fails to unveil any teaching of a fluid being directed into the caps. More specifically, in figure 2 of Takehana, fluid is directed only through the tube (unlabeled) at the left-most side of the figure. There is no other source of fluid provided in the drawings or in the disclosure of Takehana that may teach or fairly suggest a fluid stream being applied into the caps.

Moreover, the Examiner has taken Official Notice that securing positioning arms in a rotatable configuration would have been obvious to one of ordinary skill in the art. Applicant’s seasonably challenge the Examiner’s contention of Official Notice, as the Examiner has not cited any evidence to support this contention. Note, by contrast, the invention disclosure:

One end of each arm 22 may be rotatably affixed at each side of the frame 17 and intermediate the receiving end 17a and the dispensing end 17b. The other or free end of each arm 22 may then be disposed immediately adjacent the dispensing end 17b. Thereby, the arms 22 may rotate about an axis such that the free ends of the arms 22 may come towards and away from one another (Originally filed specification, paragraph [0039]).

Neither Takahana nor Taggart fairly teach or suggest such a configuration. It is well settled that in order for references to be properly combined, there must be a teaching in at least one of the references to suggest that the disclosure of any of the other references could be modified to product the Applicants' claimed invention. *ACS Hospital System, Inc. v. Montefiore Hospital et al.*, 221 U.S.P.Q. 929 (Fed. Cir. 1984); *Orthopedic Equip. Co. v. U.S.*, 217 U.S.P.Q. 193 (Fed. Cir. 1983). Additionally, absent some suggestion or incentive, the teachings of references may not be combined. *ACS, supra*, 221 U.S.P.Q. 933, *In re Rinehart*, 531 F. 2d 1048, 189 U.S.P.Q. 143 (C.C.P.A. 1976).

For these reasons, Applicants respectfully request entry of the above amendment and reconsideration and withdrawal of the rejection of claims 1-8 and 10-25 as being unpatentable under 35 U.S.C. 103(a). Moreover, Applicants requestfully submit that newly added claims 67-82 are allowable for these reasons as well as for the additional recitations they may contain.

CONCLUSION

Applicant requests entry of the above amendment and reconsideration and withdrawal of the rejection of claims 1-8 and 10-25, as amended. In the event the examiner wishes to discuss any aspect of this response, please contact the attorney at the telephone number identified below.

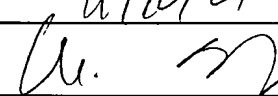
Respectfully submitted,

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